In the High Court of Uttaranchal, at Nainital.

A.O. No. 192/2002

Smt. Soni Devi W/o Late Manwar Singh
R/o Old Market Lower Chamoli,
Tehsil and District Chamoli .. Appellant.

Vs.

1- Darshani Devi alleged W/o Manwar Singh

R/o Village Kholi Badasu, Phata, Tehsil

Ukhimath District Rudraprayag.

2- Deepak Kumar,

3- Km. Deveshwari

Both minor son and daughter respectively
of Smt. Darshani Devi alleged
W/o Manwar Singh, R/o Village Kholi Badasu,
Phata, Tehsil Ukhimath,
District Rudraprayag,
through their mother Darshani Devi.

4- Pradhan Gram Sabha Badansu through

Gram Sabha Bedansu, Phata

Tehsil Ukhimath,

District Rudraprayag ..Respondents.

Sri Arvind Vashist, learned counsel for the appellant.
Sri H.S. Rawal, holding brief for Sri V.B.S. Negi, Advocate
for the respondents.

Hon'ble B.C. Kandpal, J.

This appeal, U/S 384 of the Indian Succession Act, has been preferred against the judgment and decree dated 16-5-2002, passed by the District Judge, Rudraprayag, in Misc. Case No. 10/1999, Smt. Darshani Devi and others Vs. Pradhan, Gram Sabha Badasu and others, whereby succession certificate was issued in favour applicant/respondents Deepak and Deveshwari for a sum of Rs. 83,534/- in equal share,

relating to the amount of Gratuity, Life Insurance and Pension, of their deceased father Manwar Singh.

2- Brief facts of the case are that Smt. Darshani Devi and her minor children Deepak and Km. Deveshwari presented an application U/S 372 of Indian Succession Act, before the District Judge, Rudraprayag for issuance of the succession certificate in relation to the gratuity, life insurance and pension, total amounting to Rs. 83,534/- payable on the death of their father Manwar Singh from the Office of Executive Engineer, P.W.D. Ukhimath.

3- The applicants/respondents also arrayed Smt. Soni Devi as opposite party to the petition.

4- The O.P/appellant Smt. Soni Devi filed objection before the District Judge alleging therein that neither the applicant/respondent Smt. Darshani Devi is the wife of deceased Manwar Singh nor Deepak and Km. Devishwari are their children. She claimed herself to be the wife of Manwar Singh. According to her she was married with Kalam Singh and from their wedlock two daughters were born who have been married. As the behaviour of Kalam Singh was not good toward Smt. Soni Devi, hence she filed divorce suit which was decreed and their marriage was dissolved. Thereafter Smt. Soni Devi and Manwar Singh lived together as husband and wife. She also alleged that she is employed as class-IV employee in Health Department. She also helped Manwar Singh in his treatment. Smt. Soni Devi also alleged that Smt. Darshani Devi is a married woman and she has not obtained divorce from her husband and came to live with Manwar Singh as a servant. Smt. Darshani Devi and Manwar Singh

remained together only for three years. She also alleged that after the death of Manwar Singh, Smt. Soni Devi got included her and her children as heirs of Manwar Singh in his Service Book, G.P.F. Account and Insurance etc.

5- In support of their claim the applicant/respondent produced Smt. Darshani Devi A.W. 1, and Smt. Sushila Devi, Pradhan, Gram Sabha Badasu as A.W.2 and filed the service book of deceased Manwar Singh, certificate issued by Tehsildar, copy of Kutumb Register, copy of Khautani and disability certificate of her son Deepak Singh. On the other hand the O.P./appellant Smt. Soni Devi produced herself as O.P.W.1 and filed receipt of L.I.C. and papers filed before the Consumer Forum.

6- Learned District Judge, after hearing the learned counsel for the parties and having perused the material on record, directed that the succession certificate be granted in favour of Deepak and Km. Deveshwari, son and daughter respectively of Manwar Singh deceased, pertaining to a sum of Rs. 83,534/- belonging to Manwar Singh, their father, after depositing the requisite court fee. The learned District Judge, vide impugned judgment and order dated 16-5-2002 accordingly rejected the application for succession pertaining to Smt. Darshani Devi as well as the objection filed by Smt. Soni Devi.

7. Feeling aggrieved by the aforesaid impugned judgment and order, Smt. Soni Devi has preferred this appeal, under Section 384 of the Indian Succession Act, before this Court.

8- Heard learned counsel for the parties and perused the record.

9- The learned District Judge, has recorded a categorical finding that in the years 1987 to 1981 Smt. Soni Devi has been mentioned as wife of Manwar Singh in the records, while subsequently Smt. Darshani Devi remained with Manwar Singh as his wife. The learned District Judge also observed in the impugned judgment and order that Smt. Darshani Devi and Smt. Soni Devi had been married earlier and after divorce they were married to Manwar Singh, but both of these ladies, i.e. Smt. Darshani Devi and Smt. Soni Devi did not produce any document, which may suggest that they had earlier been divorced by their first husbands. The non-production of any divorce papers before the lower court concerned clearly shows that the marriage of Smt. Darshani Devi and Smt. Soni Devi with the deceased Manwar Singh was null and void, in view of the provisions of Hindu Marriage Act, and therefore, they had been rightly denied by the court below to obtain any succession certificate.

10- As far as the son and daughter Deepak and Km. Deveshwari respectively are concerned, they are shown as wards of Manwar Singh in the records. It is settled law that an illegitimate child will also have the legal rights which are available to the legitimate child. Therefore, the District Judge was right in granting the succession certificate in favour of Deepak Singh and Km. Deveshwari, who are the son and daughter of deceased Manwar Singh.

11- I do not find any illegality or infirmity in the impugned judgment and order passed by the learned

District Judge, granting the succession certificate in favour of respondent Nos. 2 and 3, Deepak Singh and Km. Deveshwari respectively.

12- The appeal lacks merit and is liable to be dismissed.

13- Accordingly the appeal is dismissed. No order as to costs.

(B.C.Kandpal, J.)

Dated: September 07, 2006
ISB